

This issue as phrased does not meet the jurisdictional requirements of K.S.A. 1999 Supp. 44-551 or K.S.A. 44-534a in that the failure to authorize medical treatment would not constitute an issue appealable from a preliminary hearing order. However, the Order of the Administrative Law Judge discussed J. Mark Melhorn, M.D.'s opinion that claimant's symptoms, which worsened after she left work at respondent, may have included factors such as age, gender, genetics and linked elements. The Court went on to state that it was not convinced that claimant's current symptoms are more likely than not related to her employment with APAC Customer Services. Therefore, the issue deals not with claimant's entitlement to medical treatment, but whether claimant's need for medical treatment results

from an injury which arose out of and in the course of her employment with respondent. That issue would be jurisdictional pursuant to K.S.A. 44-534a and K.S.A. 1999 Supp. 44-551.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant began working as a verifier at APAC on January 12, 2000. This job required she review screens and listen to audio discs of telephone contract sales and verify their accuracy. If claimant found that there was an inaccurate entry in a particular contract, she would make anywhere from five to ten keystrokes in order to correct the problem. Claimant was also required for each verification to use the mouse approximately twice and to punch a button once, either verifying or rejecting the contract. Claimant would do this every three to seventeen minutes depending upon the length of time it took to review the contract. Claimant alleges she developed bilateral carpal tunnel syndrome while working for respondent in that capacity.

Claimant's history is significant in that she did develop bilateral carpal tunnel syndrome several years earlier while working for Casco Plastics where she ran machines making plastic parts. Claimant underwent bilateral carpal tunnel releases in March 1997. She had postoperative resolution of her problems on the right upper extremity. However, claimant's condition on the left, after improving briefly, worsened until, in 1997, claimant was reporting constant numbness, tingling and pain throughout the left forearm, hand and palm. Claimant also began suffering bilateral elbow pain and underwent bilateral ulnar cubital releases as a result.

Claimant testified, after beginning work with respondent, she began experiencing symptoms in June of 2000. She alleges she advised her supervisors of these ongoing problems and missed work repeatedly because of it.

Respondent deposed Terri Grasmick, the manager for APAC Customer Services. Ms. Grasmick identified claimant's problems as involving primarily stomach or abdominal problems. She testified claimant at no time advised anyone at respondent's place of business that she was having bilateral hand problems. Claimant left respondent's employment in July 2000 as the result of a forced termination due to claimant's poor attendance record. Ms. Grasmick testified that claimant worked only 16 of 23 available days in March, 15 of 21 in April, 15.5 of 22 in May and 16 of 26 in June. Ultimately, claimant's record was poor enough that respondent was forced to terminate her employment.

Ms. Grasmick testified that the first time they were advised claimant was alleging bilateral carpal tunnel syndrome from her employment with respondent was after her termination.

The medical reports of J. Mark Melhorn, M.D., the court appointed examiner, and Pedro A. Murati, M.D., claimant's chosen examiner, disagree on the cause of claimant's ongoing problems. Dr. Melhorn, after being advised of claimant's work activities, opined that he did not believe claimant's employment could have caused her condition. He did acknowledge claimant may have undergone a temporary aggravation of her symptoms. However, based upon the nerve conduction studies, he opined that claimant had suffered no reoccurrence of her carpal tunnel or ulnar nerve condition. In his report of October 26, 2000, he found it significant that claimant requested that her current symptoms be considered a new traumatic event in order for her to qualify for workers compensation coverage. Apparently claimant advised Dr. Melhorn that she had settled her previous workers compensation case with the plastics company. However, Dr. Melhorn felt that her ongoing problems could involve several factors, including not only the work place but also her age, her gender, her genetics, her non-work environment and linked elements. He found it significant that claimant's condition had worsened even after she left her employment with respondent.

Dr. Murati, on the other hand, as shown in his report of January 25, 2001, was advised that claimant worked for respondent on a computer when her hands began to swell and she began to notice numbness and pain bilaterally. The work history provided Dr. Melhorn appears substantially less demanding than the work history provided Dr. Murati.

After reviewing the testimony of Ms. Grasmick regarding the responsibilities of claimant's job, the Appeals Board agrees with the Administrative Law Judge that this job does not appear to be one which would aggravate a preexisting bilateral carpal tunnel syndrome. Additionally, claimant's failure to mention the bilateral carpal tunnel syndrome to her supervisors before her termination does not support her contentions.

The Appeals Board finds claimant has failed to prove that she suffered accidental injury arising out of and in the course of her employment with respondent and the Administrative Law Judge's decision to deny her medical treatment at respondent's expense for these alleged injuries should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated April 4, 2001, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2001.

BOARD MEMBER

c: Stephen J. Jones, Wichita, KS
William L. Townsley, III, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director